IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 7.9.2006

United India Insurance Company Ltd.

...Appellant

versus

Smt.Aarti and others

... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.
Hon'ble Mr.Justice Mahesh Grover.

Present: Mr.Sanjiv Pabbi, Advocate,
for the appellant.

UMA NATH SINGH, J. (ORAL)

This FAO arises out of an award/judgment dated 9.5.2006 passed by learned Presiding Officer, Motor Accident Claims Tribunal, Fatehabad, in Claim Petition No.74-MACT of 19.10.2004, awarding a sum of Rs.1,90,000/- in death case of a young man of 25 years.

Learned counsel submitted that the Insurance Company was granted permission under Section 170 of the Motor Vehicles Act, 1988 (for short `the Act') to contest the case on merits. His principal submission is that though the driver of the vehicle was covered under the policy but he should not have been given any benefit under Section 163-A of the Act for his own rash and negligent act of driving. Learned counsel also submitted that widow of the deceased had submitted an affidavit stating that the deceased was earning more than Rs.40,000/- per annum.

We have carefully considered the submissions of learned

counsel and we do not find any force therein. From the records put across during the arguments, we find that the driver of the vehicle was covered by the Insurance policy. The accident took place when an stray cow all of a sudden appeared before the vehicle on a national highway. Despite applying the brake, the deceased driver could not control the vehicle and ultimately suffered injuries, leading to his death. Therefore, it cannot be said that the deceased was rash and negligent in driving the vehicle, particularly for the reason that the situation was not within his control. As regards second submission, the Tribunal has rightly found that as a mistake on the part of the counsel, affidavit of the widow of the deceased was submitted stating that the income of the deceased was more than Rs.40,000/- per annum. On being asked, learned counsel did not point out that the widow of the deceased was a literate lady. We are also not impressed by the second submission.

Under the circumstances, we do not find any merit in the appeal and it is dismissed in limine.

(UMA NATH SINGH)
JUDGE

September 7, 2006 **(MAHESH GROVER)**
pk **JUDGE**